IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1309 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT AND ANOTHER
Versus
ASHOKKUMAR V PAREKH AND OTHERS

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Appearance :
MS FALGUNI PATEL, AGP for Appellants.
MR MC BHATT for Respondents No. 1 - 4.
MR KG PANDIT for Respondent No.5.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/10/2006

ORAL JUDGMENT

1. Present appeal is filed by the State of Gujarat as well as by its Archaeological Director by invoking provisions of Section 96 of the Civil

Procedure Code, by which the judgement and decree passed by learned Judge, City Civil Court No.11, Ahmedabad dated 24th November, 1992 is challenged. By the impugned judgement and decree, learned trial Judge has decreed the suit filed by present respondents being Civil Suit No.1352/1987. Learned Judge while decreeing the suit of the plaintiffs has ruled that the plaintiffs are the employees of State of Gujarat as they are working under Archaeological Department and the employees working under the Registering office under the Central Plan Scheme are the employees of the Central Government and both the cadres are different and on that basis circular issued by the State Government dated 12-3-1987 is set at naught. Learned trial Judge has also granted permanent injunction restraining the State Government as well as the Archaeological Department from proceeding in any manner on the basis of the said circular, which was issued by original defendant no.2.

2. Facts leading to the present controversy are as under :

3. By filing aforesaid suit, respondents no.1 to 4 herein have prayed for a declaration to the effect that they are State Government employees and that employees serving under the Registering Department are the employees under the control of the Central Government, as they are working under the scheme run by the Central Government. The case of the original plaintiffs is that seniority of the plaintiffs is different from that of the employees of Registering Department and inspite of that, defendant no.2 (appellant no.2 herein) issued a circular dated 12-3-1987 by which employees of the Registering Department are also treated to be the employees of the Archaeological Department.

4. It is the case of the plaintiffs that they are working in different

capacities under the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965 (herein after referred to as “Archaeological Act” for the sake of brevity). According to the plaintiffs, they are serving since 1979, 1981 and 1984 as the case may be. It is also the case of he plaintiffs that Central Government has published an Act known as Antiquities and Art Treasurers Act, 1972 and that the Central Government is maintaining registration offices working under the Central Government. There is a separate set up of employees under that office. The Archaeological Department issued a circular dated 12-3-1987 wherein it is stated that seniority of class-III employees and seniority of clerk-cum-typist and typist working in the Registration Department shall be fixed jointly. It is the issuance of the said circular which has given rise to the litigation and the plaintiffs knocked the door of the trial Court challenging aforesaid circular on the ground that the said circular is unconstitutional, illegal and arbitrary and by issuance of such circular, seniority and promotional rights of the plaintiffs are likely to be adversely affected. It is also the case of the plaintiffs that if seniority of the plaintiffs is required to be fixed along with employees working under the Archaeological Department, they should be put at the bottom of the list and if any occasion arises for discharging employee from service by way of retrenchment, junior most employee is required to be retrenched first from the said list.

5. It seems that at the relevant time, the plaintiffs were apprehending their termination and, therefore, they filed aforesaid suit with a view to protect their seniority and, therefore, prayer was made that even if the employees from other department is required to be brought under Archaeological Department, they must go at the bottom of the list.

6. Aforesaid suit was resisted by the original defendants on the

ground that the suit is not maintainable. According to the defendants, the Central Government passed Antiquities Act, 1972 for registering the items which are more than 100 years old. It is the say of the defendants that the scheme is to be implemented through State Government. It is the say of the defendants that there are many such Central Government sponsored schemes working in the different States and employees working in those schemes are treated as State Government employees and on that basis D.A. and other allowances are paid to such employees. It is also the say of the defendants that, therefore, staff of the Registering Office cannot be termed as employees of the Central Government. It is also the case of the defendants that on the basis of circular dated 12-3-1987 only provisional seniority list will be prepared and final list will be published only after considering the objections of the plaintiffs in this behalf. On this and other grounds, suit was resisted by the original defendants.

7. From the pleadings of the parties, learned trial Judge framed various issues at Exh.24. After considering oral and documentary evidence on record, learned trial Judge came to the conclusion that plaintiffs have proved that they are the State Government employees with separate cadre then the employees under the control of the Central Government. Learned trial Judge also found that circular dated 12-3-1987 is illegal and on the basis of such findings, learned trial Judge has decreed the suit. Original defendants, i.e., State of Guajrat as well as its Archaeological Department have challenged the aforesaid decree by way of this First Appeal.

8. This Court is informed by learned advocates that during the pendency of this First Appeal, decree of the trial Court is not stayed and much water has flown after the judgement and decree of the trial Court.

9. Ms.Falguni Patel, learned AGP for the appellants submitted that the Antiquities Department is to be supervised by the State Government though the grant is given by the Central Government for the same, however, there is nothing on record to suggest that employees of that department are to be treated as employees of the State Government. It is submitted by her that employees working under the Antiquities Department under the Antiquities Act run by the Central Government are actually performing their duty under the supervision of the State Government, as ultimately, the State is required to monitor said department with the aid and financial help of the Central Government. It is submitted by her that if those employees are not brought in Archaeological Department, such employees may loose their employment on closure of scheme of the Central Government or on closure of the Registering Office. She has tried to submit that the employees working in the Archaeological Department as well as under the Antiquities Act both are to be treated as employees of the State Government as they draw pension from state exchequer.

10. On the other hand, Mr.M.C.Bhatt, learned advocate for the respondents submitted that after considering the evidence on record and after considering the scheme under which the employees of Registration Department are working, trial Court has rightly found that said employees cannot be said to be employees under the Archaeological Department by clubbing both the departments. It is submitted by him that both the departments are different, their service conditions are different, recruitment rules are different and, therefore, employees serving in the Registration Department under the Antiquities Act cannot be placed under Archaeological Department. It is alternatively submitted that in any case, even if they are transferred or posted under the

Archaeological Department, they must go at the bottom in the seniority list.

11. In the present matter, Mr.Pandit has filed a Civil Application for joining his client as a party on the ground that because of the pendency of the case, his client, though transferred in the Archaeological Department, is not getting any benefit of promotion etc. This Court vide its order dated 27th January, 2004 has already allowed him to be joined as a party.

12. Mr.Pandit, learned advocate submitted that very few employees of the Registration Department are left out, who are now placed under Archaeological Department and even if they are shown junior most, at least whatever benefits they are entitled to get should be made available to his client. It is submitted by him that his client was selected through centralized recruitment scheme and from initial appointment, he is serving in Archaeological Department.

13. So far as this argument is concerned, Mr.Bhatt has rightly objected to it as the same is not part of the proceedings before the trial Court, therefore, this Court is not required to express any opinion on this issue and grievance raised by the client of Mr.Pandit is not required to be considered by this Court and it is for the Government to consider this aspect independently and as per the record.

14. I have gone through the record and proceedings of the case, which is made available for the perusal of the Court. I have also considered the arguments of learned AGP as well as learned counsel Mr.Bhatt and Mr.Pandit. It is required to be noted that the Central Government gave a direction for implementation of the Antiquities Act as per Exh.73. The

Central Government also gave direction for set up of offices and salary of registration officer, lower division clerks, attendants and other officers is also prescribed. It is required to be noted that it has also come in evidence that each year, Central Government used to extend the period of registering offices. Originally there were six offices, which were reduced to five and ultimately, it were reduced to only two. Even staff was also reduced. It has come in evidence that employees serving under the Registration office were subject to control and direction of the State Government, which used to run the said scheme with the aid of the Central Government. It is required to be noted that on the basis of the representation made by the department, employees working under the Registration Department were ultimately treated to be the employees of the State Government and, therefore, circular dated 12-3-1987 was issued. On that basis Director of Archaeological Department issued direction to publish common seniority list. In past, General Administrative Department of the State had also issued a circular dated 18-4-1978, which is finding place at Exh.83 in the record. As per said circular, if an employee who is serving in any other department becomes surplus on closure of his department or scheme, such employee can be accommodated in other department on compassionate ground but it is provided that such employee should be treated as junior most. It is, therefore, clear that if an occasion arises where an employee has become surplus in view of closure of his parent department, he can be transferred to other department so that he may not loose his employment but with a rider that he has to go at the bottom of seniority list so that it may not affect the seniority of the employees of that department. Here it is not in dispute that employees serving under the Archaeological Department are holding substantive posts and they have got right of future promotion and other service conditions. However, on the basis of circular dated 12-3-1987 issued by the Director of

Archaeological Department, the employees of Registration Department were ordered to be placed under Archaeological Department by protecting their seniority of the Registration Department and, therefore, such employee may even go higher up in the seniority list, if their length of service of the Registration Department is to be considered, which in my view, would seriously prejudice the rights of the employees serving in the Archaeological Department. Even if the employees of other department are absorbed in the Archaeological Department, they are required to be treated as junior most so that it may not hamper the seniority and other service conditions of employees, who are already serving substantially in the Archaeological Department. It is not the case of the State Government that from the beginning employees serving in the Registration Department (which is a department incorporated under the Antiquities Act and managed by the State Government) as well as the employees serving in the Archaeological Department were treated as common employees and their seniority list was commonly prepared. A departure was tried to be made out for the first time by circular dated 12-3-1987. It is required to be noted that both set of employees were recruited under the different schemes and under different departments and their service conditions are also different.

15. Under these circumstances, employees of both the departments are having separate cadre and they are not inter-transferrable from one department to another. If employees of both the departments are to be treated as common for all purposes, it would, naturally, hamper the case of the plaintiffs so far as their service conditions and future avenues of promotion etc., is concerned. Therefore, the circular in question would be clearly violative of Articles 14 and 16 of the Constitution of India, as both set of employees belong to different class and they could not be treated equally.

16. Assuming that the Government was justified in accommodating the employees of the Registration Department in Archaeological Department in order to see that they may not loose employment on the closure of their department, then also they cannot claim seniority over the employees, who are already working in the parent department, i.e., Archaeological Department. In that view of the matter, learned trial Judge is perfectly justified in coming to the conclusion that circular under challenge is arbitrary, discriminatory and not binding to the plaintiffs.

17. It is required to be noted that Director of Archaeological Department while issuing Circular dated 12-3-1987 has not considered circular of General Administrative Department dated 18-4-1978. Considering the aforesaid aspect of the matter, in my view, it cannot be said that trial Court has committed any error in passing the impugned judgement and decree.

18. No other points have been canvassed on behalf of the appellants. Since I do not find any substance in the arguments advanced by the appellants, the appeal stands dismissed with no order as to costs.

19. So far as grievance raised by client of Mr.Pandit is concerned, it is required to be noted that his client was not a party in the original proceedings but he was permitted to be joined by the High Court in present First Appeal. However, this Court is not required to adjudicate the issue raised by the client of Mr.Pandit in the present proceedings and it is for him to make out his case before the authority and if any representation is pending or is to be submitted by him, it is needless to say that concerned authority shall decide the same in accordance with

law and shall pass appropriate order in accordance with law without any unreasonable delay and such representation shall be decided preferably within a period of three months from today.

(P.B.Majmudar, J.)

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